In The
Supreme Court of the United States

UNITED STATES, Appellee	*	NO. 65
	*	IN THE SUPREME COURT OF THE
vs	*	UNITED STATES
HERBERT GUEST, et al, Appellants	*	

BRIEF

Of Counsel for Appellees Herbert Guest, Cecil William Myers, Denver Willis Phillips, Joseph Howard Sims, and George Hampton Turner

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HUDSON AND STULA
BY: JIM HUDSON
Attorneys for Named Appellees

Southern Mutual Building
Athens, Georgia-30601

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INTRODUCTORY STATEMENT.

The Indictment in this case was filed in the United States District Court for the Middle District of Georgia, Athens Division, on October 16, 1964, and alleged in substance that commencing on or about

January 1, 1964, and continuing to the date of the indictment, that the named Defendants, did, within the Middle District of Georgia, Athens Division, conspire together, with each other, and with other persons to the Grand Jury unknown, to injure, oppress, threaten, and intimidate Negro citizens of the United States in the vicinity of Athens, Georgia, in the free exercise of enjoyment by said Negro citizens of certain rights and privileges alleged to be secured to them by the Constitution and Laws of the United States. The indictment then proceeded to set out what the alleged rights and privileges secured to the said Negro citizens were. It was then alleged in the indictment that all of the acts were in violation of Section 241, Title 18, United States Code.

The Defendants, with the exception of James Spurgeon Lackey, then entered a plea of not quilty in open court.

All of the Defendants subsequently filed a Motion to Dismiss the indictment on the ground that the same did not charge an offense under the Laws of the United States.

A hearing on the Motion was subsequently held and the District Judge, Judge W. A. Bootle, dismissed the indictment.

The case was then appealed to this Court by the United States under the auspices of 18 *U. S. C.* 3731.

QUESTIONS PRESENTED

The United States contends, and these particular Appellees, admit, that the questions presented are as follows:

1. Whether Section 18 *U. S. C.* 241 reaches private conspiracies against the exercise of rights secured by the Equal Protection Clause of the Fourteenth Amendment.

2. Whether Section 18 *U. S. C.* 241 reaches conspiracies against the exercise of the rights to travel freely to and from any State and to use the instrumentalities of Inter-State Commerce.

3. Whether *Section* 18 *U. S. C.* 241 reaches conspiracies against the exercise of rights secured by Title II of the Civil Rights Act of 1964.

These Appellees' arguments against the contentions of the United States will be set out hereinafter in chronological order.

1.

Section 18 U. S. C. 241 does not reach conspiracies against the exercise of rights secured by the Equal Protection Clause of the Fourteenth Amendment.

Prior rulings of this Court positively hold that 18 U. S. C. 241 does not reach private conspiracies against the exercise of rights secured by the Equal Protection Clause of the Fourteenth Amendment. Please see *United States v. Harris*, 106 *U. S.* 629, 638-640; *Civil Rights Cases*, 109 *U. S.* 3, 11-19; *United States v. Cruikshank*, 92 *U. S.* 542, 554; *Virginia v. Rives*, 100 *U. S.* 313, 318; and *United States v. Williams*, 341 *U. S.* 70.

The United States apparently admits that all of the above cited cases except the Williams case are authorities contrary to their position. At page 19 of the United States' brief it is stated that, "This is not to deny that there are statements in the decisions of this Court which apparently point the other way."

There simply are no prior controlling decisions of this Court which hold that a conspiracy of private persons to deny other persons rights and privileges secured by the Fourteenth Amendment is a violation of 18 *U. S. C.* 241.

The United States apparently relies upon the dissenting opinion in the Williams case for their authority to the contrary. The dissenting opinion in the Williams case is not authroity for their position, but rather, it strongly upholds the decision by Judge Bootle dismissing the indictment.

The facts in the Williams case show that Williams was a special police officer of a city, had taken an oath as such officer, and a regular police officer was detailed to attend the investigation out of which the conspiracy indictment arose.

It is clear that the main difference in opinion between the majority in the Williams case and the dissent was that the majority did not consider that the individuals who perpetrated the crime were acting for a State or under color of State authority, and the dissent did construe the facts to be that the individuals indicted were acting for a State or under color of State authority.

Justice Douglas said at Page 92 of the Williams case, "There is no decision prior to that of the Court of Appeals in this case (Williams case) which is opposed to our view. Fourteenth Amendment rights have sometimes been asserted under Section 19 now 241 and denied by the Court. That was true in *U. S. v. Cruikshank*, 92 *U. S.* 542. But the denial had nothing to do with the issues in the present case. The Fourteenth Amendment protects the individual against STATE ACTION, not against acts done by INDIVIDUALS (the emphasis is Justice Douglas'). Civil Rights Cases, 109 U. S. 3, et cetera. The Cruikshank case, like others, involves wrongful action by INDIVIDUALS (emphasis Justice Douglas') who did not act for a State nor under color of State authority. As the Court in the Cruikshank said, 'The Fourteenth Amendment prohibits a State from denying to any person within its jurisdiction the equal protection of the laws; but this provision does not, any more than the one which preceeds it, — add anything to the rights which one citizen has under the Constitution against another.' 92 U. S. pp. 554, 555. There is implicit in this holding, as Mr. Justice Rutledge observed in the Screws case, Supra, (325 U. S. 125 Note 22) that wrongful action by State officials would bring the case within Section 19 (now 241). For the Court in the Cruikshank case stated, 'The only obligation resting on the United States is to see that the

States do not deny the right. This amendment guarantees, but no more. The power of the National Government is limited to the enforcement of this guaranty.'

Section 19 has in fact been applied to the protection of rights under the Fourteenth Amendment. See U. S. v. Hall, (CC, ALA,) F. CAS. Number 15712 p. 1147; Ex Parte Riggins (CC, ALA) 134 F. 404, Writ dismissed, 199 U. S. 547. Those attempts which failed did so not because Section 19 was construed to have too narrow a scope, but because the action complained of was INDIVIDUAL action, not STATE action." (Emphasis Justice Douglas').

At page 8 of the Brief of the United States the statement is made that, "In light of the Williams case, the threshold question with respect to this branch of the case is whether Section 241 protects Fourteenth Amendment rights at all."

We think that under prior decisions, there is authority for the proposition that Section 241 protects Fourteenth Amendment rights, but to paraphrase Justice Douglas in the Williams case, it protects from wrongful action by individuals who act for a State or either under color of State authority. The indictment in the case at bar does not even remotely suggest that these Appellees in the course of their conspiracy were acting for a State or either under State authority.

The United States in its Brief at Page 51 seems to admit that the Williams case forecloses prosecutions of this character under 18 *U. S. C.* 241, since they state that, "After HARRIS, the criminal sanctions of the *Ku Klux Klan Act of* 1871 were no longer available and the ruling in *United States v. Williams*, 341 *U. S.* 70, seemed to foreclose prosecutions of this character under Section 241 of the Criminal Code."

The Williams case and all the preceding authorities thus hold that 18 U. S. C. 241 does not reach private conspiracies as alleged in this indictment.

Since the Williams case Congress has not seen fit to implement legislation to enforce the guarantee of the Equal Protection Clause against private conspiracies as alleged in the indictment in the case at bar. The United States contends that the Civil Rights Act of 1964 was such a legislative implementation, but we shall argue that point in its proper place.

18 U. S. C. 241, under the quoted authorities, simply does not lend itself to the indictment as laid.

2.

The next question is whether or not Section 18 U. S. C. 241 reaches conspiracies against the exercise of the rights to travel freely to and from any State and to use the instrumentalaties of Interstate Commerce. As applied to the facts of the case at bar this question must be answered in the negative.

The case of *United States v. Harry C. Wheeler*, 254 *U. S.* 281, *Headnote* 4, holds that, "The United States is without power to forbid and punish infractions by individuals of the right of citizens to reside peacefully in the several States, and to have free ingress into and egress from such States.

Authority to deal with such wrongs is exclusively within the power reserved by the Federal Constitution to the State." (Fourth Amendment to the United States Constitution, Section 2).

The Court further stated, "There are two classes of rights enjoyed by citizens of the United States as such: (a) Rights by which one is entitled to protection merely against action by or on behalf of the States, where the action is in conflict with the provisions of the Federal Constitution and (b) rights which one is entitled to protection against the action of individuals."

At page 292 of said case the Court states that, "The provisions of the Fourteenth Amendment are also concerned with action by the States, and do not confer a Federal right to protection against the action of individuals, in the absence of action by the State."

Here again, assuming, but not admitting, it might be that such a conspiracy entered into by persons or with persons acting for a State authority, might be a crime against the United States under 18 U. S. C. 241. However, as previously pointed out, the indictment in the case at bar does not remotely connect these Appellees with any person acting for a State or under State authroity.

We cannot more aptly put it than did Judge Bootle in his opinion below which is found at page 33 of the printed Transcript of the Record, where he states, "We think it clear also that the right asserted in Paragraph 4 to travel freely to and from the State of Georgia, and to use highway facilities and other instrumentalaties of the State and Interstate Commerce within the State of Georgia is not an attribute of National citizenship. See Wheeler v. United States, supra. Travel rights including free ingress to a State and egress there from are rights inherent in citizens of all free Governments including citizens of all the States and the States have full authority to punish violations of this fundamental right. United States v. Wheeler, supra, at 293. These rights were not created, or granted, by the Federal Constitution. Article IV of the Articles of Confederation recognized these rights as belonging to the "Free Citizens in the Several States" and sitpulated that "the people of each State shall have free ingress and egress to and from any other State." Article IV, Sec. 2 of the Constitution plainly intended to preserve and enforce the limitation as to discrimination imposed upon the States by Article IV of the Articles of Confederation, and thus necessarily assumed the continued possession by the States of the reserved power to deal with free residents, ingress and egress." United States v. Wheeler, supra, at 294. Thus, these ordinary and usual travel rights are not Federal citizenship rights and do not become such by virtue of the exercise of the Congressional Power to regulate Interstate Commerce under Article I, sec. 8, of the Constitution. Regulation is not tantamount to creation, and if it were the

creation would be for inhabitants and citizens of States generally and not exclusively for citizens of the United States."

We respectfully submit that 18 U. S. C. 241, especially under the allegations of this case where there is no connection at all with a person acting for a State or under authority of a State, does not reach conspiracies against the exercise of the rights to travel freely to and from any State and to use the instrumentalities of the Interstate Commerce.

3.

The United States contends that 18 U. S. C. 241 reaches conspiracies against the exercise of rights secured by Title II of the Civil Rights Act of 1964.

Section 207 (b) of the Civil Rights Act of 1964 provides that, "The remedies provided in this Title shall be the exclusive means of enforcing the rights based on this Title, but nothing in this Title shall preclude any individual or any State or local agency from ascerting any right based on any other Federal or State law not inconsistent with this Title, including any Statute or Ordinance requiring non-discrimination in public establishments or accommodations, or from pursuing any remedy, civil or criminal, which may be available for the vindication or enforcement of such right."

Senator (now Vice-President) Humphrey, in explaining Section 207 (b) in a speech on the Senate floor on May 1, 1964, stated that, "The clause which reads that, 'the remedies provided in this Title shall be the exclusive means of enforcing the rights thereby created' is designed to make clear that a violation of Section 201 and 202 cannot result in criminal prosecution of the violator or in a judgment of money damages against him. This language is necessary because otherwise it could be contended that a violation of these provisions would result in criminal liability under 18 U. S. C. 241

or 242. Thus, the first clause in Section 207 (b) simply expresses the intention of Congress that the rights created by Title II may be enforced only as provided in Title II. This would mean, for example, that a proprietor in the first instance, legitimately but erroneously believes his establishment is not covered by Section 201 or Section 202 need not fear a jail sentence or a damage action if his judgment as to the coverage of Title II is wrong."

This is positive evidence that in passing the Civil Rights Act of 1964 it was not intended that a violation of said Act could ever result in prosecution under 18 U. S. C. 241.

The word "exclusive" is susceptible of no other meaning.

As is pointed out in United States v. Williams, 340 U. S. 70, at page 79, Congress has revised the Act which now contains 18 U. S. C. 241 a total of five times. In the last three revisions of the Act, the Congress had before it a consistent course of decisions of the Supreme Court which indicated that what is now Section 241 was in practice interpreted only to protect rights arising from the existence and powers of the Federal Government. Further, in passing the 1964 Civil Rights Act, Congress had before it the decision in the Williams case, supra, wherein it is held even by the dissent, "The Fourteenth Amendment protects the individual against STATE ACTION, not against acts done by INDIVIDUALS. (emphasis is Justice Douglas') *United States v. Williams*, 341 *U. S.* 70 *at page* 92.

It manifestly was never intended by Congress that a violation of the Civil Rights Act of 1964 could ever result in punishment under 18 U. S. C. 241.

CONCLUSION

For this Court to overrule the decision of Judge Bootle is to sow the evil seeds of an all encompassing Federal Police Force which would not be in accordance with the intentions of the framers of our great Constitution and which would not be to the best interests of the citizens and inhabitants of the United States of America.

We earnestly submit that 18 U. S. C. 241 does not reach such a private conspiracy, as is alleged in the indictment, against the exercise of rights secured by the Equal Ptrotection Clause of the Fourteenth Amendment, that it does not reach such a conspiracy, as is alleged in this indictment, against the exercise of the rights to travel freely to and from any State and to use the instrumentalaties of Inter-State Commerce, that it does not reach such a conspiracy as alleged in this indictment against the rights secured by Title II of the Civil Rights Act of 1964, and that the judgment of the trial court dismissing the indictment should be affirmed.

HUDSON AND STULA

BY:

Attorney for Appellees,
Herbert Guest, Cecil
Williams Myers, Denver
Willis Phillips,
Joseph Howard Sims,
and George Hampton Turner.